

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAY MILLAR,

Plaintiff,

-against-

THE CITY OF NEW YORK, SGT. RICHARD GARCIA,
Shield No. 2522, P.O.s "JOHN" and "JANE DOE" #1-10,
Individually and in their official capacities, (the names
"John" and "Jane Doe" being fictitious, as the true names
are presently unknown), and FEDERATED
DEPARTMENT STORES INC.,

Defendants.

**CITY OF NEW YORK AND
SGT. RICHARD GARCIA'S
ANSWER TO DEFENDANT
MACY'S CROSS CLAIMS**

07 CV 8229 (RPP)(FM)

Jury Trial Demanded

Defendants, City of New York and Sergeant Richard Garcia, by their attorney,

Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the
complaint, respectfully allege, upon information and belief, as follows:

1. Defendants repeat and reallege each and every paragraph of their Answer
to the complaint dated December 13, 2007, as if fully set forth herein, including all affirmative
defenses set forth therein.

2. Deny the allegations set forth in paragraph "63" of defendant Macy's
Answer with Cross Claims.

3. Deny the allegations set forth in paragraph "64" of defendant Macy's
Answer with Cross Claims.

4. Deny the allegations set forth in paragraph "63" of defendant Macy's
Answer with Cross Claims.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

5. The cross claims fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

6. Defendants City of New York and Sergeant Garcia have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

7. At all times relevant to the incident, defendants City of New York and Sergeant Garcia acted reasonably in the proper and lawful exercise of its discretion.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

8. To the extent defendant Macy's asserts state law claims against the City of New York and Sergeant Garcia, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

9. Defendant Macy's cross-claims against defendants City of New York and Sergeant Garcia are not ripe for adjudication.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

10. This Court lacks subject matter jurisdiction over defendant Macy's cross-claims.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

11. Defendant Macy's cross claims may be barred in part by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

12. Defendant Macy's is not entitled to indemnification by the City defendants.

WHEREFORE, Defendants City of New York and Sergeant Richard Garcia request judgment dismissing the cross claims of defendant Macy's, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 30, 2008

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of the City of New York
Attorney for Defendants City of New York
and Sergeant Richard Garcia
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By:

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**ANSWER TO DEFENDANT MACY'S CROSS
CLAIMS ON BEHALF OF CITY OF NEW
YORK and SERGEANT RICHARD GARCIA**

MICHAEL A. CARDOZO
*Corporation Counsel of the City of New York
Attorney for Defendants City of New York and The
Sergeant Richard Garcia
100 Church Street
New York, New York 10007*

*Of Counsel: Meghan A. Cavalieri
Tel: (212) 788-6405*

Due and timely service is hereby admitted.

New York, N.Y., 2007

..... Esq.

Attorney for.....